IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 546 OF 1984

1. Kashinath Lalaji Bhavsar
   (since deceased through his LRs.)
   1a) Sudhakar Kashinath Bhavsar.
   1b) Ramesh Kashinath Bhavsar.
   1c) Amarnath Kashinath Bhavasar
2. Amarnath Kashinath Bhavasar.
3. Sudhakar Kashinath Bhavsar.
4. Ramesh Kashinath Bhavsar. ... Appellants.

Versus.

1. Walmik Ragho Mahale.
2. Kashinath Ragho Mahale.
3. Sitabai Ragho Mahale,
   (since deceased through her LRs.)
   3a) WalmikRagho Mahale.
   3b) KashinathRagho Mahale.
   both residents of
   Nandgaon, Dist.Nashik.
   3c) Smt.Chhabutai Haribhau Gadakh,
   R/o. Mathur Padi, Taluka:
   Malegaon,Dist. Nashi. ... Respondents.

Ms.A.R.S.Baxi for the Appellants.

Shri M.M.Sathaye for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 24th July, 2006.

ORAL JUDGMENT.

1. Heard the learned Advocates appearing for the parties. On 28th November 1986 the Second Appeal was admitted by passing the following order: "Admit as regards grounds Nos.6, 7 and 8". The order indicates that the Second Appeal was admitted on the questions

arising out of Grounds Nos.6, 7 and 8 of the Memorandum of Appeal. The said Grounds Nos.6, 7 and 8 read thus:

(6) The Court below has failed to consider that the Respondents have not denied the contents of Exh.27 and, therefore, they were admitted. It is further submitted that when the execution of the document was held to be proved, it ought to have been held that the Appellants have proved that the said document and the Courts below ought to have relied upon.

(7) The Courts below have failed to consider that the Respondents have not denied the material allegations and the factual statements made in respect of the sale deed and also the agreement at Exh.27. The Court below has erred in holding that the allegations were denied by implication by the Respondents.

(8) The Court below has failed to consider that the Respondents tried to contend that Exh.27 was not legal and not binding upon them. It was an error to hold that by this contention, the Respondents have

denied the execution of the said documents.

2. The Appellants are the unsuccessful Plaintiffs. The Appellants filed a suit for declaration that the registered conveyance dated 14th March 1958 executed by the Appellants in favour of the father of the Respondents Nos.1 and 2 does not reflect the real nature of transaction between the parties and the same was not to be acted upon between the parties. According to the case of the Appellants, in the year 1958, the 1st Appellant was in financial difficulty and therefore, he took a sum of Rs.4999/- from the father of the Respondents Nos.1 and 2 and handed over possession of the suit lands to the father of Respondents Nos.1 and 2. According to the case of the Plaintiffs, the sale deed was nominally executed on 14th March 1958 in favour of the Respondents Nos.1 and 2. According to the case of the Appellants on 15th March 1958, the father of the Respondents Nos.1 and 2 executed a writing on a plain sheet of paper and thereby he agreed to return the suit land to the Appellants after enjoying the same for 7 years and to share fruits bearing trees on the suit land. According to the case of the Appellants, acting upon the said writing the father of the Respondents Nos.1 and 2 gave a share to the Appellants. However, from 1965 onwards he stopped giving the share. The suit

is based on a demand made by notice sent by the Advocate for the Appellants to the deceased father of the Respondents calling upon him to hand over possession.

3. The suit was contested by the Respondents Nos.1 and 3 by filing the written statement. According to the case of the Respondents Nos.1 and 2, the writing/receipt dated 15th March 1958 was not produced on record by the Appellants. According to the Respondent Nos.1 and 3, such receipt was not executed. The trial Court dismissed the suit and the dismissal of the suit has been confirmed by the Appellate Court.

4. The learned Advocate for the Appellants submitted that the execution of the writing/receipt dated 15th March 1958 was not specifically denied by the Respondents Nos.1 and 3 in their written statement. She submitted that if execution of the said document is not disputed by the Respondents Nos.1 and 3, the said Respondents were under an obligation to execute the conveyance in favour of the Appellants. It is submitted that in all the three notices which were issued prior to the filing of the suit, a specific stand was taken by the Appellants that the sale deed executed by them was not to be acted upon and that there is no inconsistency in the stand taken in the legal notices issued prior to the institution of the suit and the averments made in

the plaint. The learned Advocate appearing for the Respondents supported the impugned Judgments and decrees.

5. I have considered the submissions. It must be noted here that in the plaint there is no prayer for execution of the document of reconveyance by the Respondents. The substantive relief sought is for a declaration that the sale deed dated 14th March 1958 was not to be acted upon by the parties. There is a consequential prayer for possession. The first Appellate Court has referred to the first legal notice issued by the Appellants through their Advocate on 4th September 1966 which is at Exh.42. In the said notice it is contended that the sale deed dated 14th March 1958 is not legal and valid as it is not executed for legal necessity. There is not even a reference in the said notice to the writing/receipt dated 15th March 1958. In the said notice demand for possession was made on the ground that the Sale Deed dated 14th March, 1958 was invalid.

6. The Apex Court in a decision in the case of K.C.Kapoor v/s. Smt.Radhika Devi (dead) by LRs. and others [(1981) 4 S.C.C. page 487] held that even though written statement may be inartistically drafted the same cannot be construed in a hyper- technical manner and the

Court has to see whether the allegations made therein gave sufficient notice to the Plaintiffs of what case they have to meet. In the present case a specific assertion has been made in the written statement that the receipt/document dated 15th March 1958 is not produced by the Plaintiff and such a document is not executed by the Respondents.

7. The first Appellate Court held that the contents of the receipt/document dated 15th March, 1958 were not proved. The said finding is based on consideration of oral and documentary evidence on record. The Appellate Court has also considered the fact that in notice dated 4th September, 1966 issued by the Appellants the said document is not even referred to.

8. There is no reason to interfere with the concurrent findings of facts recorded by the Courts below. The Second Appeal is dismissed with no order as to costs.

Judge.